

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Windstream Petition for Conversion to Price Cap	)	WC Docket No. 07-171
Regulation and for Limited Waiver Relief	)	

**ORDER**

**Adopted: March 14, 2008****Released: March 18, 2008**

By the Commission:

**I. INTRODUCTION**

1. In this order, we grant, to the extent described below, a waiver petition filed by Windstream Corporation (Windstream) on August 6, 2007, and modified on February 4, 2008, which seeks to convert its cost company, rate-of-return regulated study areas to price cap regulation on July 1, 2008.<sup>1</sup> As explained below, Windstream may convert these study areas to price cap regulation by establishing initial price cap indexes (PCIs) for its price cap baskets. In so doing, Windstream shall target its average traffic-sensitive (ATS) rate to a target of \$0.0065 per ATS minute of use as required by section 61.3(qq) of the Commission's rules.<sup>2</sup> We also grant Windstream a waiver to allow it to continue to receive interstate common line support (ICLS) for the converted study areas. Windstream's per-line ICLS shall be calculated at its 2007 per-line disaggregated ICLS amounts, and frozen at those per-line levels going forward, and its aggregate annual ICLS support shall be capped at an amount equal to its overall 2007 ICLS (after application of any required true-ups). We find that our grant of the waiver will further the public interest by providing Windstream regulatory incentives to maintain and enhance efficient operations and requiring the reduction of some of Windstream's access rates. The waiver granted in this order is subject to any revisions addressing intercarrier compensation, price cap regulation, or universal service requirements that the Commission may adopt in the future.

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<sup>1</sup> Windstream Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief, WC Docket No. 07-171 (filed Aug. 6, 2007) (Windstream Petition); Letter from Eric N. Einhorn, Vice President Federal Government Affairs, Windstream Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-171 (Feb. 4, 2008) (Windstream February 4 Letter). *See also* Letter from Eric N. Einhorn, Vice President Federal Government Affairs, Windstream Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-171 (Feb. 29, 2008) (Windstream February 29 Letter); Letter from Eric N. Einhorn, Vice President Federal Government Affairs, Windstream Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-171 (Mar. 7, 2008) (Windstream March 7 Letter). A Public Notice seeking comment on the petition was released on August 23, 2007. *Comment Sought on Windstream Petition for Conversion to Price Cap Regulation and for Other Limited Waiver Relief*, WC Docket No. 07-171, 22 FCC Rcd 16060 (Wireline Comp. Bur. 2007).

<sup>2</sup> 47 C.F.R. § 61.3(qq).

## II. BACKGROUND

2. Local exchange carriers (LECs) provide, among other things, telephone exchange service and intrastate and interstate exchange access services. The Commission regulates the provision of interstate access services by incumbent LECs, pursuant to either rate-of-return regulation or price cap regulation. LECs may also be eligible to receive several types of universal service support.

3. *Rate-of-return regulation.* Under rate-of-return regulation, incumbent LECs are permitted to recover, through tariffed rates, their revenue requirements, which are their regulated operating costs plus a return, currently set at 11.25 percent, on their regulated rate base.<sup>3</sup> To achieve this, rate-of-return LECs set rates at levels that, when multiplied by expected demand, will yield revenues equal to the revenue requirements.<sup>4</sup> Thus, as costs and demand change from year-to-year, rate-of-return LEC access charges may vary from tariff period to tariff period. Rate-of-return LECs are required to target their rates to earn the prescribed rate-of-return percentage, which generally acts to limit the amount that rate-of-return LECs may earn. To recover their revenue requirements, rate-of-return LECs file tariffs, either on their own, or as issuing carriers in one of the interstate access tariffs filed by the National Exchange Carrier Association (NECA).<sup>5</sup> Rate of return LECs may be eligible to receive various forms of universal service support, including ICLS, which is relevant to this waiver proceeding. The ICLS support mechanism is meant to provide explicit support to offset the interstate portion of rate-of-return carriers' loop costs that are not recovered through interstate access charges. ICLS support is equal to the amount the projected common line revenue requirement exceeds common line revenues.<sup>6</sup>

4. *Price cap regulation.* In 1990, the Commission adopted a new method for regulating the interstate access charges of larger incumbent LECs that focused on prices rather than earnings to maintain just and reasonable interstate access rates.<sup>7</sup> Pursuant to Part 61 of the Commission's rules, the rates of price cap LECs must comply with a series of price cap indexes or ceilings that are designed to give price cap LECs some pricing flexibility, while at the same time ensuring that interstate access rates remain just

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<sup>3</sup> *Represcribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, CC Docket No. 89-624, Order, 5 FCC Rcd 7507 (1990).

<sup>4</sup> Some rate-of-return LECs do not use their own costs to determine their revenue requirement, but instead are compensated based on average schedule formulas. These formulas are developed from studies of comparable cost companies and are designed to compensate them at a level approximating the revenue requirement of a comparable cost company. See *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, Notice of Proposed Rulemaking, 22 FCC Rcd 17989, 17990-94, paras. 2-10 (2007) (*Access Charge Tariff NPRM*) (describing the tariff process).

<sup>5</sup> See *id.* at 17992-93, paras. 6-8.

<sup>6</sup> See 47 C.F.R. §§ 54.901 *et. seq.*; *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Federal-State Joint Board on Universal Service, Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation, Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166, 16 FCC Rcd 19613, 19673-74, para. 142 (2001) (*MAG Order*).

<sup>7</sup> See *Policy and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, Second Report and Order, 5 FCC Rcd 6786 (1990) (*LEC Price Cap Order*).

and reasonable.<sup>8</sup> Price cap LECs file access tariffs annually, but, unlike rate-of-return carriers, the rates they file are not designed to earn a regulated rate of return.<sup>9</sup> Originally, under price cap regulation, prices were allowed to increase by a measure of inflation (the Gross Domestic Product-Price Index (GDP-PI)) minus a productivity offset, or X-factor, which represented the amount by which LECs could be expected to outperform economy-wide productivity gains.<sup>10</sup> In the Commission's 2000 *CALLS Order*, the X-factor as a productivity mechanism was replaced with an X-factor that served as a rate adjusting mechanism, which, over time was set equal to the GDP-PI.<sup>11</sup> Price cap carriers are not limited to, or guaranteed, a prescribed rate of return like rate-of-return incumbent LECs. Further, price cap LECs may be eligible to receive various forms of universal service support, including Interstate Access Support (IAS), which is relevant to this waiver proceeding.<sup>12</sup> IAS is drawn from a targeted \$650 million fund, which the Commission established in the *CALLS Order* to replace implicit support that was previously collected through interstate common line access charges by price cap LECs.<sup>13</sup>

5. *Windstream proposal.* Windstream was formed in July 2006 when Valor Communications Group merged with the wireline operations of ALLTEL Corporation.<sup>14</sup> Windstream currently has some study areas subject to rate-of-return regulation and other study areas subject to price cap regulation pursuant to a waiver of the all-or-nothing rule contained in section 61.41 of the Commission's rules.<sup>15</sup> As of the date of the waiver petition, Windstream had 32 study areas in sixteen states, with 23 study areas served by rate-of-return regulated Windstream cost companies.<sup>16</sup> Of the approximately 3.2 million access lines that Windstream serves, about 60 percent are in study areas subject to rate-of-return regulation.<sup>17</sup>

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<sup>8</sup> 47 C.F.R. §§ 61.41-49.

<sup>9</sup> 47 C.F.R. § 69.3(h).

<sup>10</sup> See *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long-Distance Users, Federal-State Joint Board on Universal Service*, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962, 13018, para. 135 (2000) (*CALLS Order*) (subsequent history omitted).

<sup>11</sup> See *id.* at 13028-38, paras. 160-182.

<sup>12</sup> See *id.* at 13043-55, paras. 195-213.

<sup>13</sup> See 47 C.F.R. §§ 54.801 *et seq.* See also *CALLS Order*, 15 FCC Rcd at 13043-55, paras. 195-213.

<sup>14</sup> Windstream Petition at 3.

<sup>15</sup> 47 C.F.R. § 61.41; *Valor Communications Group, Inc. (New Valor) Petition for Waiver*, WCB/Pricing No. 05-37, Order, 21 FCC Rcd 859 (Wireline Comp. Bur. 2006) (*New Valor Order*). By the terms of that order, Windstream, as the successor to New Valor, is required to seek prior Commission approval to change its rate-of-return study areas to price cap regulation. *New Valor Order*, 21 FCC Rcd at 863, para. 8.

<sup>16</sup> Windstream Petition at 3. Cost companies subject to rate-of-return regulation rely on their own individual costs in setting rates and receiving universal service support. This differs from average schedule companies, which rely on statistical studies of the costs and demand of comparable cost companies, by which NECA and USAC establish formulas for access settlements and universal service support for the average schedule companies. Subsequent to the filing of the petition, Windstream acquired another cost company, Windstream Concord Telephone, Inc. f/k/a The Concord Telephone Company (Windstream Concord) that it seeks to include under the waiver. See Windstream February 29 Letter at 3.

<sup>17</sup> Windstream Petition at 3.

Windstream requests authority to convert all 24 of Windstream's rate-of-return regulated cost company study areas to price cap regulation.<sup>18</sup> Two Windstream entities – Windstream Accucomm Telephone, Inc., and Windstream Georgia Telephone, Inc. – are average schedule companies that will remain in the NECA tariffs.<sup>19</sup>

6. Noting that the Commission's rules allow rate-of-return LECs to convert to price cap regulation, Windstream indicates that the rules and Commission orders are unclear on the process for conversion.<sup>20</sup> Windstream states that it crafted its proposal to follow the *CALLS Order* structure as closely as possible.<sup>21</sup> Windstream proposes to convert all of its cost study areas that are subject to rate-of-return regulation to price cap regulation, but would not convert the two average schedule study areas noted above.<sup>22</sup> Windstream proposes to establish its initial switched and special access PCIs for the switched and special access baskets using its current switched and special access rates.<sup>23</sup> As modified in the Windstream February 4 Letter, Windstream proposes to target its switched access ATS rate to \$0.0065, as required by section 61.3(qq) of the Commission's rules.<sup>24</sup> Finally, Windstream proposes that it continue to receive ICLS, rather than receiving IAS from the \$650 million support mechanism.<sup>25</sup>

7. Windstream indicates that a grant of this waiver, and allowing Windstream to adopt price cap regulation, would reward Windstream for becoming more productive and efficient, and "[t]his productivity and efficiency ultimately benefits consumers."<sup>26</sup> It also contends that the conversion to price cap regulation will facilitate the development of competition and lead to more rational investment decisions.<sup>27</sup> Further, Windstream claims that a grant of the waiver would eliminate the costs it faces in operating under two different regulatory models that have different regulatory incentives.<sup>28</sup> Finally,

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<sup>18</sup> *Id.* at n.7 (requesting conversion for its 23 existing cost rate-of-return regulated entities); Windstream February 29 Letter at 3-4 (requesting conversion for an additional cost rate-of-return regulated entity, Windstream Concord, which was acquired after Windstream filed its petition).

<sup>19</sup> *Id.* at 8; *see* 47 C.F.R. §61.41(b) ("If a telephone company, or any one of a group of affiliated telephone companies, files a price cap tariff in one study area, that telephone company and its affiliates, except its average schedule affiliates, must file price cap tariffs in all their study areas." (emphasis added)).

<sup>20</sup> Windstream Petition at 14 (citing 47 C.F.R. § 61.41(a)(3); *New Valor Order*, 21 FCC Rcd at 863, para. 8).

<sup>21</sup> Windstream Petition at 1-2.

<sup>22</sup> *Id.* at 8.

<sup>23</sup> *Id.* at 18.

<sup>24</sup> Windstream February 4 Letter at 1-2; 47 C.F.R. §61.3(qq). Initially, Windstream sought a waiver of this rule so it could target its ATS rate to \$0.0095, noting that its switched access line density per square mile is approximately 20.5, which is very close to the 19 lines per square mile used by the Commission to establish the cut-off for the \$0.0095 ATS target rate. Windstream Petition at 20-24.

<sup>25</sup> *See* Windstream Petition at 28; *see also* Windstream February 29 Letter at 2-3.

<sup>26</sup> Windstream Petition at 10 (citing *LEC Price Cap Order*, 5 FCC Rcd at 6787).

<sup>27</sup> Windstream Petition at 11 (citing *CALLS Order*, 15 FCC Rcd at 12964, 12980, 12990-94, 12997-98).

<sup>28</sup> Windstream Petition at 12-13.

Windstream asserts that, by converting its rate of return study areas to price cap regulation, concerns about potential cost-shifting between rate-of-return and price cap affiliates will be eliminated.<sup>29</sup> The six parties filing comments all support the Windstream waiver petition.<sup>30</sup>

### III. DISCUSSION

#### A. The Public Interest

8. We find that good cause exists to grant, to the extent described below, Windstream's petition to convert its rate-of-return study areas to price cap regulation.<sup>31</sup> As noted above, the Commission concluded in 1990 that incentive based regulation is preferable to rate-of-return regulation.<sup>32</sup> The Commission found that several benefits would flow from the adoption of price cap regulation, including incentives for carriers to become more productive, innovative, and efficient.<sup>33</sup> The Commission also found that price cap regulation is likely to benefit consumers directly or indirectly through lower access prices.<sup>34</sup> In subsequent annual tariff filings, several of the larger incumbent LECs adopted price cap regulation. No incumbent LEC has adopted price cap regulation since the *CALLS Order* was adopted in 2000.

9. In its petition, Windstream seeks to take advantage of the opportunity provided by section 61.41(a)(3) of the Commission's rules to convert its rate-of-return study areas to price cap regulation.<sup>35</sup> We agree with Windstream that there is no clear path by which a rate-of-return LEC can adopt price cap regulation as modified by the *CALLS Order*.<sup>36</sup> Despite this lack of a clear path, Windstream states that it

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<sup>29</sup> *Id.* at 13.

<sup>30</sup> Parties filing comments were AT&T Inc., Embarq Corp., Frontier Communications, Independent Telephone and Telecommunications Alliance, United States Telecom Association, and Verizon.

<sup>31</sup> Generally, the Commission's rules may be waived for good cause shown. 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166.

<sup>32</sup> *LEC Price Cap Order*, 5 FCC Rcd at 6789, para. 21.

<sup>33</sup> *Id.* at 6791, para. 31.

<sup>34</sup> *Id.* at 6791, para. 33.

<sup>35</sup> 47 C.F.R. § 61.41(a)(3).

<sup>36</sup> In the *Second MAG Further Notice*, the Commission tentatively concluded that the failure of the *CALLS Order* to address the inclusion of new carriers in IAS indicated that the *CALLS Order* was not designed to be open to new carriers or study areas. *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Federal-State Joint Board on Universal Service*, CC Docket Nos. 00-256, 96-45, Report and Order and Second Further Notice of Proposed Rulemaking, 19 FCC Rcd 4122, 4163, para. 93 (2004) (*Second MAG Further Notice*).

has attempted to follow the structure of the *CALLS Order* in developing its plan.<sup>37</sup> We believe that Windstream has made a good faith effort to do this, despite the obstacles presented. The modified plan presented by Windstream offers the public interest benefits generally attributed to incentive regulation – specifically, it provides the incentive for Windstream to become more efficient, innovative, and productive.<sup>38</sup>

10. The question presented is whether the public interest will be better served by strict enforcement of the current rules, or by granting a waiver to allow Windstream to adopt its modified proposal. Based on the information provided by Windstream and the commenters, we find that the public interest will be better served by granting the requested relief. We believe that this request presents a unique set of circumstances,<sup>39</sup> and that its grant will facilitate the achievement of Commission policies. There is unanimous record support for the proposed plan. In addition to the above-noted benefits, granting the requested relief will directly lower some access rates over time and will likely reduce the universal service support that Windstream receives in the future. Finally, a grant of this waiver will eliminate the need for Windstream to incur the costs of operating under two diverse regulatory systems with their differing incentives.<sup>40</sup> The waiver granted in this order is subject to any revisions addressing intercarrier compensation, price cap regulation, or universal service requirements that the Commission may adopt in the future.

## **B. Price Cap Baskets**

11. Part 69 of the Commission's rules establishes interstate access rate elements that are designed to recover the costs of various parts of the local network. Under price cap regulation, these rate elements are grouped together into five price cap baskets: the common line, marketing and transport interconnection charge (CMT) basket; the traffic sensitive switched interstate access basket (traffic sensitive basket); the trunking basket; the special access basket; and the interexchange basket.<sup>41</sup> Each basket is subject to its own price cap.<sup>42</sup> The interstate access rates associated with these baskets may be assessed on either end-user customers or carriers.

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<sup>37</sup> Windstream Petition at 5.

<sup>38</sup> See *LEC Price Cap Order*, 5 FCC Rcd at 6791, para. 31.

<sup>39</sup> The Commission has pending petitions from three other carriers seeking waivers to adopt price cap regulation. Petition of Puerto Rico Telephone Company, Inc., for Election of Price Cap Regulation and for Limited Waiver of Pricing and Universal Service Rules, WC Docket No. 07-292 (filed Nov. 19, 2007); Consolidated Communications Petition for Conversion to Price Cap Regulation and for Limited Waiver, WC Docket No. 07-291 (filed Dec. 4, 2007); Frontier Petition for Limited Waiver Relief Upon Conversion of Global Valley Networks, Inc. to Price Cap regulation, WC Docket No. 08-18 (filed Dec. 18, 2007).

<sup>40</sup> Windstream Petition at 7-8.

<sup>41</sup> See 47 C.F.R. § 61.42. The interexchange basket is established only by price cap LECs that offer interstate interexchange services that are not classified as access services for the purposes of Part 69 of the Commission's rules. 47 C.F.R. § 61.42(4). Windstream does not indicate whether it offers such services. To the extent that it does, Windstream must establish a price cap interexchange basket consistent with the Commission's rules.

<sup>42</sup> 47 C.F.R. § 61.42.



## 1. CMT Basket

12. To recover costs associated with the local loop, or common line, rate-of-return LECs assess certain interstate access charges on end-user customers. Price cap LECs generally assess the same types of common line-related charges on their end-user customers, although the levels of such charges are determined differently. The common-line related end-user charges assessed by both rate-of-return and price cap LECs include Subscriber Line Charges (SLCs), Line Port Costs in Excess Of Analog, and Special Access Surcharges.<sup>43</sup> Price cap LECs may also assess Primary Interexchange Carrier Charges (PICCs) and Carrier Common Line (CCL) charges on interexchange carriers in certain instances.<sup>44</sup> A price cap LEC's common line rates are limited by a CMT basket PCI and by its average price cap CMT revenues per-line month<sup>45</sup> in addition to the SLC caps imposed by Part 69 of the Commission's rules. Because this is the first conversion of a rate-of-return LEC to price cap regulation under the *CALLS Order* structure, we describe in some detail how Windstream shall convert its common line rates to the price cap common line structure in the following paragraphs.

13. We begin with the calculation of Windstream's initial average price cap CMT revenues per-line month. Price cap CMT revenue is the maximum total revenue a filing entity would be permitted to receive from SLCs, PICCs, CCL charges, and marketing expenses, using base period lines. Price cap CMT revenue does not include price cap LEC universal service contributions.<sup>46</sup> Thus, for purposes of the conversion, Windstream's CMT revenues will include its 2007 SLC revenues plus the marketing expenses shifted to the CMT basket from the local switching and transport baskets pursuant to section 69.156 of the Commission's rules.<sup>47</sup> Windstream's average price cap CMT revenues per-line month will then be the CMT revenues divided by the 2007 base period demand.<sup>48</sup> The average price cap CMT revenues per-line month, in conjunction with the \$6.50 per-line cap on residential and single line business lines and the \$9.20 per-line cap on multiline business lines, will create the ceiling on the SLC charges that Windstream may assess end users.<sup>49</sup>

14. The other control on the CMT basket is the common line PCI. To create its common line PCI, Windstream shall multiply its January 1, 2008, end user rates by 2007 base period demand. To this result, Windstream shall add the marketing expenses being shifted to the CMT basket pursuant to section

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<sup>43</sup> 47 C.F.R. §§ 69.104, 69.130 (rate-of-return carrier SLC and line port surcharge in excess of analog rules); 47 C.F.R. §§ 69.152, 69.157 (price cap carrier SLC and line port surcharge in excess of analog rules); 47 C.F.R. § 69.115 (special access surcharge rules applicable to both rate-of-return and price cap carriers).

<sup>44</sup> 47 C.F.R. §§ 69.153, 69.154.

<sup>45</sup> Price cap CMT revenues are a carrier's CMT, marketing, and transport interconnection charge revenues. 47 C.F.R. §§ 61.3(cc), 61.42(d)(1).

<sup>46</sup> 47 C.F.R. § 61.3(cc).

<sup>47</sup> 47 C.F.R. § 69.156. The use of the \$6.50 SLC from 2007 in calculating the price cap CMT revenues reflects Windstream's commitment to not assess a \$7.00 SLC on non-primary residential lines, as would otherwise be permitted for price cap carriers, as part of its receipt of frozen per-line ICLS support. See Windstream February 29 Letter at 2.

<sup>48</sup> 47 C.F.R. § 61.3(d).

<sup>49</sup> See generally 47 C.F.R. § 69.152.

69.156 of the Commission's rules.<sup>50</sup> One final adjustment will be necessary for Windstream to establish its initial CMT basket PCI. Windstream has committed, in conjunction with its receipt of universal service at a level equating to its 2007 ICLS receipts frozen on a per-line basis, to forgo the recovery of any PICC or CCL charge.<sup>51</sup> To reflect this commitment, and to avoid creating any headroom from Windstream's forgoing this recovery, Windstream must reduce the CMT basket PCI by an amount equal to the PICC and CCL revenues it is forgoing.

## 2. Traffic Sensitive and Trunking Baskets

15. Rate-of-return and price cap LECs assess local switching and transport charges on interexchange carriers. Price cap LECs reflect the appropriate rates and demands in PCIs for the local switching and trunking baskets. Windstream proposes to set its initial local switching and trunking basket PCIs using current switched access rates. Under its modified proposal, it will target its ATS rates to \$0.0065, as required by section 61.3(qq), using an X-factor of 6.5 percent.<sup>52</sup>

16. Windstream's modified proposal for converting its switched access rates to price caps is reasonable. It must establish initial local switching and trunking basket PCIs using its January 1, 2008, switched access rates multiplied by 2007 base period demand.<sup>53</sup> The PCIs must be reduced to eliminate any marketing expenses that were recovered through switched access rates in 2007.<sup>54</sup> Windstream shall begin reducing its switched ATS rates to the \$0.0065 target level through the use of a 6.5 percent X-factor in its 2008 annual access tariff filing consistent with the requirements of section 61.45(i) of the Commission's rules.<sup>55</sup> This will further the public interest by ensuring that carrier customers receive reduced local switching and transport rates. Consistent with the Commission's price cap rules, Windstream must establish actual price indexes, service categories, and service band indexes for the traffic sensitive and trunking baskets.<sup>56</sup>

17. Windstream states that it has two cost companies that currently are in the NECA traffic-sensitive pool – Windstream Ohio and Windstream Concord – that do not have existing rates based on their own costs.<sup>57</sup> Windstream indicates that it will initialize the rates of these two companies to meet its

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<sup>50</sup> 47 C.F.R. § 69.156.

<sup>51</sup> Windstream February 29 Letter at 2-3. Although IAS is included in the common line PCI and adjusted annually as projected IAS receipts change, the ICLS amount here will be frozen. Windstream should, therefore, exclude its ICLS receipts from the PCI calculations since they will have no effect on the PCI. This will also simplify the ICLS true-up process.

<sup>52</sup> 47 C.F.R. § 61.3(qq).

<sup>53</sup> The local switching support (LSS) Windstream may receive will be excluded from the PCI calculations, as is done by other price cap LECs. We note that if Windstream becomes more efficient, its LSS will decrease.

<sup>54</sup> See 47 C.F.R. § 69.156.

<sup>55</sup> 47 C.F.R. § 61.45(i).

<sup>56</sup> 47 C.F.R. §§ 61.46; 61.42(e)(1) and (2); 61.47.

<sup>57</sup> Windstream Petition at 9; Windstream February 29 Letter at 3-4. Windstream acquired Windstream Concord subsequent to the filing of the waiver petition. It seeks similar treatment under the waiver request for the acquired company as it requested for its other cost company in the NECA pool.



authorized rate-of-return and then adapt those rates to the price cap rate structure in a manner similar to that used for its other study areas.<sup>58</sup> This is a reasonable approach for initializing the rates and PCIs for the study areas that are in the NECA pool. Windstream shall include the cost studies used to develop the rates for these two companies in the supporting materials filed with its initial price cap tariff(s).

### 3. Special Access Basket

18. Windstream proposes to use its current special access rates to set its PCI for the special access basket. We agree that Windstream's current special access rates are the appropriate rates to use in setting its initial PCIs for the special access basket. Under the rules adopted in the *CALLS Order*, there is no requirement for further reductions in the special access PCIs.<sup>59</sup> Accordingly, Windstream shall set its initial PCIs for special access using its January 1, 2008, special access rates times the appropriate 2007 base period demand. Consistent with the Commission's price cap rules, Windstream must establish actual price indexes, service categories, and service band indexes for the special access basket.<sup>60</sup>

### C. Universal Service

19. Windstream proposes to continue to receive high-cost universal service support to recover explicitly its common line costs after it converts its rate-of-return cost study areas to price cap regulation.<sup>61</sup> As noted above, the high-cost support mechanisms available to allow eligible telecommunications carriers (ETCs) to recover common line costs through explicit universal service support, rather than implicitly through a portion of access charge rates, are ICLS for rate-of-return carriers, and IAS for price cap carriers. The Commission's rules do not make ICLS available to price cap carriers,<sup>62</sup> and the Commission tentatively has concluded that carriers converting from rate-of-return regulation to price cap regulation are ineligible for IAS established in the *CALLS Order*.<sup>63</sup> Accordingly, absent Commission intervention, Windstream's company-wide conversion to price cap regulation could result in its loss of explicit support to offset the interstate portion of Windstream's loop costs that are not recovered through interstate access charges.

20. Windstream argues that realization of all of the public interest benefits of its conversion to price cap regulation depends upon Windstream's continued receipt of some high-cost universal service support for its loop costs.<sup>64</sup> In its petition, Windstream requested that the Commission grant a partial waiver such that it may receive ICLS set at a frozen per-line amount, based on a calculation of the IAS that Windstream would have received in 2007 if it had been eligible to receive IAS.<sup>65</sup> In the alternative,

<sup>58</sup> Windstream Petition at 9; Windstream February 29 Letter at 3-4.

<sup>59</sup> 47 C.F.R. § 61.45(b)(1)(iv).

<sup>60</sup> 47 C.F.R. §§ 61.46; 61.42(e)(3); 61.47.

<sup>61</sup> See Windstream Petition at 27-34.

<sup>62</sup> See 47 C.F.R. § 54.901(a) (providing ICLS for rate-of-return carriers).

<sup>63</sup> See *Second MAG Further Notice*, 19 FCC Rcd at 4163, para. 93.

<sup>64</sup> See Windstream Petition at 27.

<sup>65</sup> See *id.* at 28.

Windstream requests that the Commission grant a waiver to allow Windstream to continue to receive ICLS for the converted study areas, but at 2007 per-line disaggregated ICLS amounts, and frozen at those per-line levels going forward.<sup>66</sup> Under this approach, as discussed above, Windstream agrees to forego any PICC or CCL charges that might otherwise be assessable under the price cap rules, and would forego an increase in the non-primary residential SLC cap from \$6.50 to \$7.00.<sup>67</sup> The Commission has previously expressed a preference for explicit support, through universal service support mechanisms, as opposed to implicit support, through access charges.<sup>68</sup> Therefore, we find that Windstream should continue to receive high-cost support for loop costs via ICLS. We find good cause to grant this partial waiver request to allow Windstream to continue to receive ICLS for its converted study areas, but at 2007 per-line disaggregated ICLS amounts, and frozen at those per-line levels going forward. Furthermore, as a condition of our waiver, we cap Windstream's future overall annual ICLS at an amount equal to Windstream's overall 2007 ICLS, after application of any required true-ups. This waiver is conditioned upon Windstream's adherence to the commitments discussed above and subject to Commission modification in its access charge or universal service reform proceedings.<sup>69</sup>

21. For each Windstream study area, the frozen per-line ICLS amount will be based on the amount of per-line ICLS Windstream received in 2007, after the application of any true-ups based on actual cost and revenue data for 2007.<sup>70</sup> The monthly frozen per-line ICLS amount will be calculated by dividing the final annual 2007 ICLS amount by twelve times the average of Windstream's line counts as of December 31, 2006, and December 31, 2007.<sup>71</sup> Because this final frozen per-line ICLS cannot be determined until after Windstream files its 2007 cost and revenue data, Windstream will receive an interim per-line ICLS amount until the final amount can be determined. This interim amount will be calculated by dividing the amount of ICLS disbursed to each Windstream study area in December 2007, not including any prior period true-ups, by the number of lines served in each respective study area as of December 31, 2007. When the final frozen per-line ICLS amount is determined, any support distributed

<sup>66</sup> Windstream February 29 Letter at 2. ICLS is provided to both rate-of-return incumbent LEC ETCs and competitive ETCs in a study area based on the incumbent LECs' embedded costs. 47 C.F.R. § 54.901.

<sup>67</sup> Windstream February 29 Letter at 2.

<sup>68</sup> *MAG Order*, 16 FCC Rcd at 19621-22, 19642-46, paras. 15, 62-68; *CALLS Order*, 15 FCC Rcd at 13006, para. 111.

<sup>69</sup> 47 C.F.R. § 1.3; see also *WAIT Radio* 418 F.2d at 1159; see also *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended (47 U.S.C. § 160(c)), for Forbearance from Certain Dominant Carrier Regulation of Its Interstate Access Services, and for Forbearance from Title II Regulation of Its Broadband Services, in the Anchorage, Alaska, Incumbent Local Exchange Carrier Study Area*, WC Docket No. 06-109, Memorandum Opinion and Order, 22 FCC Rcd 16304, 16337 n.211 (2007) (finding that, "because a condition of the forbearance granted by this order requires ACS to receive ICLS at the existing per-line rate, rather than based on the rate-of-return regulated carrier requirements in section 54.901(a), there is good cause to waive these rules").

<sup>70</sup> The actual cost and revenue data required to true-up Windstream's 2007 ICLS must be filed by December 31, 2008. See 47 C.F.R. § 54.903(a)(4).

<sup>71</sup> For example, if a Windstream study area had a final 2007 ICLS of \$4,800, and its line counts as of the end of 2006 and 2007 were, respectively, 110 and 90, that study area would have a frozen ICLS per-line of \$4 per month – \$4,800/(((110+90)/2)\*12).

pursuant to the interim per-line ICLS amount will be trued up to the final per-line level.<sup>72</sup> Consistent with section 54.307 of the Commission's rules and subject to any revisions addressing universal service requirements that the Commission may adopt in the future, competitive ETCs serving Windstream's study areas will receive the same per-line support amounts and be subject to the same true-ups as Windstream.<sup>73</sup>

22. We partially waive section 54.901(a) of our rules, which makes ICLS available only to rate-of-return carriers, so that Windstream may convert its rate-of-return study areas to price cap regulation but continue to receive ICLS for those study areas.<sup>74</sup> Because Windstream will be receiving ICLS on a frozen per-line basis, the amount of ICLS it receives will decline if its number of lines declines. Further, we partially waive the ICLS reporting and support calculation provisions of sections 54.901 and 54.903 of the Commission's rules so that Windstream's ICLS may be set at 2007 per-line disaggregated ICLS amounts and frozen at those per-line levels going forward.<sup>75</sup> Finally, we waive any portions of sections 54.802 through 54.806 of our rules that would preclude Windstream from receiving ICLS at the 2007 per-line disaggregated ICLS amounts.<sup>76</sup> To ensure that these waivers do not result in Windstream receiving increased ICLS in the future due to any increases in its line counts, as a condition of our waiver, we cap Windstream's future overall annual ICLS at an amount equal to Windstream's overall 2007 ICLS, after application of any required true-ups.<sup>77</sup>

#### **D. Waiver of Notification Requirement**

23. Incumbent LECs that plan to leave the NECA pool are required by section 69.3(i)(1) of the Commission's rules to notify NECA of their intent by March 1 of the tariff filing year in which they plan to leave the pool(s).<sup>78</sup> In its February 29 letter, Windstream requests a waiver of section 69.3(i)(1) to allow it to notify NECA of its intent once the Commission has reached a decision on its waiver request.<sup>79</sup>

24. As noted above, the Commission may waive its rules for good cause shown.<sup>80</sup> We find good

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<sup>72</sup> We also note that Windstream will be subject to regular ICLS true-ups for the period up until its conversion to price cap status. Accordingly, Windstream will be required to file actual cost and revenue data for 2008 pursuant to section 54.903(a)(4).

<sup>73</sup> 47 C.F.R. § 54.307.

<sup>74</sup> 47 C.F.R. § 54.901.

<sup>75</sup> See 47 C.F.R. §§ 54.901, 54.903. We note that Windstream must comply with those reporting requirements necessary for all true-ups and calculations necessary to determine the ultimate frozen per-line ICLS amount, as described in para. 21 *supra*.

<sup>76</sup> See 47 C.F.R. §§ 54.802 - 54.806.

<sup>77</sup> See Windstream March 7 Letter at 2. As noted in Windstream's March 7 letter, the annual ICLS cap would apply only to those converting companies owned by Windstream on the effective date of this order. *Id.* at 2.

<sup>78</sup> 47 C.F.R. § 69.3(i)(1).

<sup>79</sup> Windstream February 29 Letter at 4.

<sup>80</sup> See *supra* note 28; 47 C.F.R. § 1.3.

cause exists to waive section 69.3(i)(1) of the Commission's rules to permit Windstream to notify NECA of its intention to withdraw companies from one or both of the NECA pools within thirty days of the release of this order. Absent a waiver, the relief we grant Windstream in this order would be nullified because of this procedural limitation. Given the small number of companies at issue, we find that grant of this waiver will not impose an undue hardship on NECA in developing its annual access tariff filing.

#### **IV. ORDERING CLAUSES**

25. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 201-203, and 254(g) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 160, 201-203, and 254(g), that the Windstream petition for waiver IS GRANTED to the extent described herein.

26. IT IS FURTHER ORDERED, pursuant to section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, that section 69.3(i)(1) of the Commission's rules IS WAIVED to the extent indicated herein.

27. IT IS FURTHER ORDERED that this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary